UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

NATIONAL STEEL SUPPLY, INC.

AND

INTERNATIONAL BROTHERHOOD OF TRADE UNIONS, LOCAL 713

CASES
2-CA-36457
2-CA-36464

Jamie Rucker Esq., Counsel for the General Counsel
Henry Hamburger Esq., Counsel for the Respondent
Jordan El Haq, Representative for the Union

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in New York City on October 20 to 25, 2004. The charge and amended charge in 2-CA-36457 were filed on August 17 and August 26, 2004. The charge in 2-CA-36464 was filed on August 18, 2004. The Complaint was issued on September 17, 2004 and alleged as follows:

1. That on or about August 13, 2004, the Respondent by its owner, Vincent Anza Sr., interrogated employees about their union activities and threatened them with discharge.

2. That on or about August 17, 2004, the Respondent by Vincent Anza, Jr. and/or Joseph Anza, threatened employees with discharge if they supported the Union.

3. That on or about August 16 and 17, 2004, the Respondent, for discriminatory reasons, first issued a warning to and then discharged Eric Atalaya.

4. That on or about August 17, 2004, the Respondent, for discriminatory reasons discharged 5 truck drivers.

5. That on or about August 17, 2004, the Respondent, for discriminatory reasons discharged approximately 25 its warehouse employees.

6. Alternatively, that on or about August 17, 2004, the 25 warehouse employees ceased work and engaged in a strike but that after they or their representative made an oral unconditional offer to return to work, the Respondent failed to reinstate them.

7. That between July 31, 2004 and August 3, 2004, a majority of the employees in a unit

consisting of all full-time and regular part-time drivers and warehouse employees designated the Union as their collective bargaining representative.

8. That notwithstanding the Union's request for bargaining, the Respondent's violations noted above made a fair election impossible so that a bargaining order is required.

Based on the evidence as a whole, including my observation of the demeanor of the witnesses and after consideration of the Briefs filed, I hereby make the following findings and conclusions.

Findings and Conclusions

I. Jurisdiction

It is admitted and I find that the Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. It also is admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

The Respondent is a New York corporation with a place of business in the Bronx where it is engaged in the wholesale supply of steel products to companies in the building and construction industry. Steel in various forms is purchased by it and resold out of a warehouse and yard located on Havemeyer Avenue. Apart from the people who work in the office, there are about 25 employees who work in the warehouse or yard. They gather, package and load goods for delivery to the Company's customers. There are also about 6 employees who drive trucks.

The Respondent contends that one of the alleged discriminates, Eric Atalaya, is a supervisor within the meaning of Section 2(11) of the Act. I do not agree.

Atalaya credibly testified that he works in the warehouse where he mainly operates a forklift. His other main duty is to hand out "orders" to the other warehouse workers who pull materials out of their storage locations for loading on trucks. In this regard, the order is simply a piece of paper describing a particular customer's purchase that is prepared by the office employees. Upon receipt of this order Atalaya then turns around and gives it to the first available warehouse worker who is then responsible for filling the order. Thus, insofar as Atalaya "assigns" work to employees, this function is, in my opinion, routine and lacking in the exercise of independent judgment.

The Respondent's witnesses testified that Atalaya had the authority to discharge employees and claimed that he had done so on four occasions in the past. Nevertheless, Vincent Anza conceded that he had no direct knowledge that Atalaya had discharged anyone, that he had no knowledge as to when these individuals were discharged and that there were no records that would substantiate the assertion that these employees were discharged by Atalaya. Joseph Anza admitted that he had no direct knowledge of two of the four individuals allegedly discharged by Atalaya. He testified that his knowledge of the other two discharges was based on conversations he had with Atalaya. But as to these two, Atalaya credibly denied that he had any such

conversations with Joseph Anza.

Atalaya credibly denied that he ever discharged any employees, (or that he ever recommended their discharge), and the Respondent has produced no-one who could offer any direct evidence, by way of witnesses or documentary evidence, to contradict Atalaya.

The Respondent asserted that Atalaya set the lunch breaks for the employees and that he was the one who determined when the employees left work at the end of the day. But in both respects, the evidence simply showed that Atalaya exercised no independent judgment and that his directions were routine at best. As to lunches, the Company had a procedure whereby the warehouse employees rotated their lunch periods so that someone was available at all times. And as to going home, the evidence was that employees were told to go home when their assigned work was done for the day.

Where an assertion is made that an individual is a supervisor within the meaning of the Act, the burden of proof is on the party making the assertion. *Wilshire at Lakewood*, 343 NLRB No. 23, (Sept. 30, 2004); *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *East Village Nursing & Rehabilitation Center v. NLRB*, 165 F. 3.d 960, 962 (D.C. Cir. 1999). As the evidence in this case does not show that Atalaya exercised any of the functions described in Section 2(11) of the Act, I conclude that he was not a supervisor within the meaning of the Act.

On or about July 31, 2004, Union organizer El-Haq, met with employees of the Company in the parking lot of Home Depot, which is near the Respondent's facility. At this meeting, at least 22 employees signed cards authorizing the Union to represent them for collective bargaining purposes. These were the drivers and warehouse employees. The evidence therefore shows that as of July 31, 2004, the Union had obtained authorization cards from a majority of the drivers and warehouse employees, a group that would constitute a unit appropriate for bargaining within the meaning of Section 9(a) of the Act.

Another union meeting at a somewhat more distant location was held on Saturday, August 7, 2004. I note that Tamishwar Angad, whom both sides agree is a warehouse supervisor, attended both meetings. Although Angad testified that he did not tell his superiors about the two union meetings, I don't think that this is likely or credible.

On Friday, August 13, 2004, Eric Atalaya was asked to remain after work by Vincent Anza. And when he was asked if Atalaya knew anything about a union organizing effort, Atalaya said that he did not. According to Atlaya's credited testimony, Anza said that if he found out about a union drive he was going to let people go.

With respect to the above, Vincent Anza testified that he did question Atalaya about a union as he had received an anonymous phone call telling him about a union drive amongst his employees. He denied however, that he threatened to discharge anyone. Of these two versions, which are not that different, I am going to credit the testimony of Atalaya.

On Monday, August 16, 2004, Atalaya received a warning allegedly for failing to answer the radio promptly. (In fact, Atalaya admits that on August 16, 2004, he failed to answer a radio call). In this regard, the evidence was that the Company had issued radios to Atalaya and Angad so that they could more easily communicate with the office if a question arose. These were

issued to supplement the telephones that were in the warehouse and the loudspeaker system that was already in place. The radios were therefore a more convenient way for the office to communicate with Atalaya and Angad but were not, in my opinion, crucially different from what had existed before. In any event, the evidence was that at various times *both* Atalaya and Angad missed calls either because they were busy doing something else at the time or because the noise level was to high, or because the batteries were low. I note that apart from the merits of the warning, it appears that this was the first time that the Company gave a written warning to any employee for any reason.

On Tuesday, August 17, 2004, the Union sent a telegram to the Respondent in which it claimed that it represented a majority of the employees and demanded recognition. *This was received by the Company at 9:36 a.m.*

Joseph Anza testified that at some point on Tuesday morning, he heard that Atalaya failed to answer another radio call and that this had resulted in the loss of a customer order. As to this, Atalaya admits that he missed the call but I think that the Company asserts too much when it claims that it lost an order because of this. There were, as noted above, alternate means of reaching Atalaya. (Like the phone or the public address system.)

In any event, Joseph Anza testified that although he considered Atalaya to be an excellent employee in all other respects, he decided that enough was enough and that having again failed to answer the radio call, he could no longer keep Atalaya employed. Joseph Anza could not say with certainty as to when he made his decision on Tuesday morning although he did testify that it had to have been made sometime between 9 and 10 a.m. Therefore, based on his own testimony, it could very well have been made after 9:35 a.m., when the Union's telegram was received.

According to Joseph Anza, he wrote up a letter of termination for Atalaya somewhere between 10:00 and 10:30 a.m. and he gave this to Giovani to deliver to Atalaya at about 10:30 a.m. After Atalaya left the premises, he called driver Narces Guillen to tell him that he had been fired. Guillen in turn called the other drivers and of the six drivers out on the road that day, five decided to return to the shop without making their deliveries. (They began to arrive back at the warehouse at around 12:15 p.m.) Also during the morning, the warehouse employees stopped working and gathered together to talk about Atalaya's discharge. As they were doing so, Vincent Anza came by and said, "If you want to follow your leader, follow him." At that point, the warehouse employees left and gathered outside on the street in what must have looked like a work stoppage to the owners.

Union representative El-Haq arrived at the Company's facility between 2:00 p.m. and 3:00 p.m. He testified that he asked Joseph Anza to put the employees back to work but that Anza refused to answer him.

According to Joseph Anza, he and his father decided during that first day they had to find replacements and *to terminate the employees as replacements were obtained.* In this respect, he had a form letter prepared which he attempted to deliver to some of the workers on August 18, 2004. This read:

> This letter is to notify you that you have been terminated by National Steel Supply. You have abandoned your job and have been replaced.

Your employment with us is terminated effective immediately.[1]

On August 17, 2004 and on the days that followed, the Company hired new workers and it kept on file a series of the above cited letter addressed to the individuals it considered to have been discharged. Thus, on August 17, the Company made a record indicating that it discharged Graciano Aguilar, Carlos Cruz, Roberto Gonzalez, Sotero Gonzalez, Marcelino Maldonado, Felipe Mencias, Policarpo Mencias, Narcizo Rodriguez and Adrian Umanzor. On August 19, the Company made a record that on this date it discharged Jorge Flores, Artemio Ramirez and Alejandro Tale. On August 20, the Company made a record that on this date it discharged Maximino Flores, Tomas Flores, Ryan Naipaul, Porfirio Perez, Telesforo Perez, and Heriberto Sanchez. On August 24, the Company made a record that on this date it discharged Sergio Batres, Sergio de la Cruz, Jose Gonzalez, Jose Luis Hilaro, Juan Carlos Restrepo and Jamie Sanchez. And on August 26, the Company made a record that on this date it discharged Edgar Ochoa.

On August 25, 2004, the Union sent a telegram to the employer that stated as follows:

> Local 713, I.B.O.T.U. is requesting that you reinstate the employees of National Steel Supply who were terminated for their union activity. Those employees have informed us that they are able and ready to resume work immediately.

The Respondent did not respond to the Union's August 25, 2004 telegram. However, the evidence does show that a four of the strikers were rehired at some point and that a fifth person, who may not have been a striker, returned to work after his vacation ended.

As noted above, the Employer essentially concedes that it discharged the individuals that it believed were engaged in a strike. I also note that to the extent that the Respondent hired replacements, it produced no evidence that these were permanent as opposed to temporary replacements. There also was no evidence that the Respondent offered reinstatement to any of the strikers when replacements left.

III. Analysis

I have already stated my reasons for concluding that Eric Atalaya was not a supervisor within the meaning of Section 2(11) of the Act. Therefore, if I conclude that he was discharged, principally because of his union activities, then that discharge would violate Section 8(a)(1) and (3) of the Act.

The facts show that no later than Friday, August 13, 2004, the Employer was aware of its employees' union activities. Thus, supervisor Angad had attended two union meetings held on July 31 and August 7. And although he asserted that he did not tell his superiors about these meetings, I view with great skepticism, the assertion by Vincent Anza, that it was an *anonymous* phone call by which he first learned of the union activity.

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[1] This letter was prepared before the Company hired labor counsel. In a way it sort of illustrates that laypersons do not make any distinction between discharging strikers and permanently replacing them. In order to appreciate the difference, it apparently takes at least one course in Labor Law.

The evidence shows that on that Friday, (August 13), Vincent Anza questioned both Atalaya and Angad about the union. (This is admitted by Anza). In addition, I credit Atalaya's testimony that Anza said that if he found out about a union drive, he was going to let people go. I therefore conclude that by this transaction, the Respondent violated Section 8(a)(1) of the Act, inasmuch as I conclude that Vincent Anza engaged in coercive interrogation and that he threatened employees with discharge.[2]

Atalaya received a written warning on August 16 for failing to answer a radio call made to him in the warehouse. Atalaya admits that this was the case. Atalaya also admits that on the following day, he missed another radio call. The Respondent asserts that the fact that Atalaya failed to respond to radio calls made to him on these and previous occasions, was the reason that he was discharged. Notwithstanding that assertion, I do not believe it to be true.

The evidence indicates that Atalaya was the first person who had ever received a written warning even though there have been employees who have previously been discharged. The decision to issue a written warning was made right after the Employer became aware of the Union's organizing campaign.

In addition, the evidence also shows that the Respondent considered Atalaya to be a good worker and the evidence demonstrates that Angad also missed calls on occasion. That Atalaya may have deserved some kind of warning for missing the calls is perhaps likely. On the other hand, it is my opinion, that he would have been discharged for these offenses is so improbable as to be not credible.

According to Joseph Anza, the decision to discharge Atalaya was made somewhere between 9:00 and 10:00 a.m. on August 17, 2004. The Union's telegram demanding recognition was received by the Employer on that date at 9:36 a.m. While coincidences do happen, the timing of the events here, (from Friday to Tuesday), indicates to me a high degree of probability that the Employer's decision to discharge Atalaya was predominately influenced by the receipt of the Union's telegram, especially after Atalaya had assured Vincent Anza on the previous Friday that he knew nothing of a union.

In short, the circumstantial evidence demonstrates a preponderance of evidence that the Respondent's decision to discharge Atalaya was because of his, and the other employees activities in joining and assisting the Union. In my opinion, the Employer has not demonstrated that it would have discharged Atalaya for justifiable reasons other than his union activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).[3]

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[2] To the extent that he questioned Angad about the Union, this would not be violative of the Act, inasmuch as the parties stipulated that he was a statutory supervisor.

[3] I note that it has not been my experience that employers will confess in litigated cases that they have discharged an individual because of his union or protected concerted activity. Nor has it been my experience that the General Counsel has been able to find a "smoking gun." For those of us who have had the opportunity to try or hear these types of cases the "proof" almost always comes down to evaluating the circumstances in which the discharges take place. And in this regard, the standard of proof is by a preponderance of the evidence. This is a civil case and does not require either the standards of "beyond reasonable doubt" or "clear and convincing

Continued

The evidence regarding the other employees is not particularly ambiguous and by the Respondent's own account, shows that it violated Section 8(a)(1) and (3) of the Act.

When the warehouse employees heard about Atalaya's discharge, they started to talk about it amongst themselves. The General Counsel produced evidence that Vincent Anza came by and said; "If you want to follow your leader, follow him." At this point the warehouse employees left the warehouse and gathered outside on the street in what must have looked like a work stoppage. Although the General Counsel contends that Anza's words, the Respondent discharged the warehouse employees, I cannot come to that conclusion because the words by themselves are too ambiguous for a reasonable person to conclude that they should be construed as a discharge.

Assuming however, that the employees were not immediately discharged but went out on strike, the evidence establishes that this was an unfair labor practice strike because it was prompted by the discharge of Atalaya, who as previously noted, was discharged in violation of Section 8(a)(3) of the Act.

The credible evidence shows that at about 2:00 p.m. on August 17, union representative El-Haq arrived at the facility and asked the Employer to put these people back to work. This request was ignored and the Respondent's own evidence is that it prepared termination notices to the employees whom it considered to be on strike. And in some cases, it attempted to deliver them by hand.

Since the employees who were engaged in a strike were engaged in what I would define as an unfair labor practice strike, the Employer's failure to reinstate them to employment immediately upon the offer to return to work, constitutes a violation of Section 8(a) and (3) of the Act. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (l956); *Drivers Local 662 v. NLRB*, 302 F.2d 908 (D.C.Cir., l962); *Northern Wire Corp*. 291 NLRB 727 (1988); *Workroom For Designers Inc*., 274 NLRB 840, 856 (l985).

Moreover, even if I concluded that this was an economic strike, the result would be the same. For one thing, the Employer has not demonstrated that the replacements it hired were permanent as opposed to temporary replacements. Thus, although an employer may be justified, in accordance with *Laidlaw Corp*., 171 NLRB 1366 (1968), enfd. 414 F.2d 99, (7th Cir. 1969), in hiring permanent replacements and refusing to recall economic strikers until vacancies occur, that defense is not applicable if the employer has hired temporary replacements. *Montauk Bus*, 324 NLRB 1128 (1997). Where replacements are hired for striking employees, the Board has held that the presumption is that replacements are temporary and that the burden of proof is on the employer to show that the replacements are permanent. *Hansen Bros. Enterprises*, 279 NLRB 741 (1986); *O. E. Butterfield, Inc*., 319 NLRB 1004 (1995).

Secondly, the evidence shows that the Union asked Employer to reinstate the employees on the afternoon of August 17 and repeated an unconditional offer to return to work on August 25 by telegram. Yet despite these offers, the Respondent ignored them and continued to hire

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evidence."

replacement workers thereafter.

As the evidence shows that the Respondent, as of August 17, 2004 decided to discharge the striking employees, and thereupon failed to reinstate them upon offers to return to work, I conclude that the Respondent has violated Section 8(a)(1) and (3) of the Act.[4]

Finally, given the fact that the Respondent has illegally discharged the larger part of its work force and replaced them with new employees, it is my opinion that a fair and free election is not possible even if the unfair labor practices were to be remedied within even a reasonable period of time. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (l969); *NLRB v. Jamaica Towing, Inc*., 632 F.2d 208, 212, (2nd Cir. 1980). Accordingly, as the Union by the time it demanded recognition on August 17, 2004 had obtained authorization cards from a majority of the employees in an appropriate bargaining unit, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act and shall recommend that a bargaining order be granted in this case, effective from August 16, 2004.

Conclusions of Law

1. The Respondent, National Steel Supply Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Trade Unions, Local 713, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time drivers and warehouse employees employed by the Respondent at its Bronx, New York facility; but excluding all office employees, clerical employees, and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 16, 2004, the Union has been and is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. Since August 16, 2004, the Respondent has refused and is refusing to bargain collectively with the Union and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By discharging Eric Atalaya in retaliation for his union membership and support, the Respondent has violated Section 8(a)(1) and (3) of the Act.

7. By discharging the employees who engaged in a strike on August 17, 2004, the

[4] The Respondent put into evidence a flyer that was handed out by the Union and striking employees who asked its customers to buy their products from someone else. This, to my mind is not sufficient to establish striker misconduct or disparagement of the employer's product so as to make the strikers ineligible to return to work. *Montauk Bus* supra at page 1136.

Respondent has violated Section 8(a)(1) and (3) of the Act.

8. By interrogating employees about their union membership or activity, the Respondent has violated Section 8(a)(1) of the Act.

9. By threatening employees with job loss if they support a union, the Respondent has violated Section 8(a)(1) of the Act.

10. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged employees, it must, to the extent it has not already done so, offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I further recommend that the Respondent be required to expunge from its records any reference to the unlawful discharges.

Finally, I recommend that a bargaining order be granted.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended: [5]

ORDER

The Respondent, National Steel Supply Inc., its officers, agents, successor, and assigns, shall

1. Cease and Desist from

(a) Interrogating employees about their union membership or activity.

(b) Threatening employees with job loss if they support a union.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Discharging or otherwise disciplining employees because of their support or activities on behalf of International Brotherhood of Trade Unions, Local 713 or because they engaged in a strike.

(d) Refusing to bargain collectively with the Union as the exclusive collective bargaining agent of its drivers and warehouse employees located in the Bronx, New York.

(e) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time drivers and warehousemen employed by the Respondent at its Bronx, New York; but excluding all office employees, clerical employees, and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days from the date of this Order, offer Eric Atalaya, Graciano Aguilar, Carlos Cruz, Roberto Gonzalez, Sotero Gonzalez, Marcelino Maldonado, Felipe Mencias, Policarpo Mencias, Narcizo Rodriguez, Adrian Umanzor, Jorge Flores, Artemio Ramirez, Alejandro Tale, Maximino Flores, Tomas Flores, Ryan Naipaul, Porfirio Perez, Telesforo Perez, Heriberto Sanchez, Sergio Batres, Sergio de la Cruz, Jose Gonzalez, Jose Luis Hilaro, Juan Carlos Restrepo, Jamie Sanchez and Edgar Ochoa, full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the Remedy section of this decision.

(c) Make whole, with interest, the employees named above for the loss of earnings they suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against the above named employees and within 3 days thereafter, notify them in writing, that this has been done and that the discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities in New York, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, or sold the business or the facilities involved herein, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since August 16, 2004.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

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Raymond P. Green
Administrative Law Judge

[6] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise retaliate against our employees because of their union membership, activities or support.

WE WILL NOT interrogate employees about their union activities.

WE WILL NOT threaten our employees with discharge or job loss or other reprisals because of their membership in or support for a union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time drivers and warehousemen employed by the Respondent at its Bronx, New York; but excluding all office employees, clerical employees, and guards, professional employees and supervisors as defined in the Act.

WE WILL offer Eric Atalaya, Graciano Aguilar, Carlos Cruz, Roberto Gonzalez, Sotero Gonzalez, Marcelino Maldonado, Felipe Mencias, Policarpo Mencias, Narcizo Rodriguez, Adrian Umanzor, Jorge Flores, Artemio Ramirez, Alejandro Tale, Maximino Flores, Tomas Flores, Ryan Naipaul, Porfirio Perez, Telesforo Perez, Heriberto Sanchez, Sergio Batres, Sergio de la Cruz, Jose Gonzalez, Jose Luis Hilaro, Juan Carlos Restrepo, Jamie Sanchez and Edgar Ochoa, who have been found to have been illegally discharged, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without

prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL make whole the employees named above for the loss of earnings they suffered as a result of the discrimination against him.

WE WILL remove from our files any reference to the unlawful discharges which have been concluded to be unlawful and notify the employees in writing that this has been done and that these actions will not be used against them in any way.

National Steel Supply Inc.

(Employer)

Dated _____ **By** _____

(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, Federal Building, Room 3614, New York, NY 10278-0104

(212) 264-0300, Hours: 8:45 a.m. to 5:15 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (212) 264-0346.